

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Brittney D. Brooks,

Plaintiff,

vs.

Louis DeJoy,

Defendant.

2:24-cv-01864-MDC

**ORDER DENYING APPLICATION TO
PROCEED IN FORMA PAUPERIS (EFC
NO. 3)**

Pro se plaintiff Brittney D. Brooks filed an *Application To Proceed In Forma Pauperis* (“IFP”). ECF No. 1. The Court DENIES Brooks’s IFP application without prejudice.

DISCUSSION

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action “without prepayment of fees or security thereof” if the plaintiff submits a financial affidavit that demonstrates the plaintiff “is unable to pay such fees or give security therefor.” The Ninth Circuit has recognized that “there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

The applicant's affidavit must state the facts regarding the individual's poverty “with some particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed

1 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
2 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to
3 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
4 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
5 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
6 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
7 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
8 pauperis application).

9 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for
10 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated
11 persons. The Long Form requires more detailed information than the Short Form. The court typically
12 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears
13 that the plaintiff is concealing information about his income for determining whether the applicant
14 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct
15 form must be submitted, and the applicant must provide all the information requested in the Long Form
16 so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v.*
17 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.
18 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,
19 2016 WL 7493963 (D. Nev. Dec. 30, 2016).

21 Brooks filed the long form IFP application. ECF No. 3. Plaintiff states that she makes \$2,967 a
22 month working for the United States Postal Service. *Id.* She states that she has exactly \$2,967 in
23 expenses per month. *Id.* She also states that she spent \$12,000 on an attorney in conjunction with this
24 lawsuit. *Id.* Plaintiff, however, left the rest of the application nearly completely blank. *Id.* For example,
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1 she leaves questions about whether she has a spouse, money in the bank, bank accounts, and assets (such
2 as vehicles, even though Brittney identifies \$173 monthly expense for car insurance) completely blank.

3 *Id.*

4 The Court finds that plaintiff's IFP application is incomplete, so it cannot determine if plaintiff
5 qualifies for IFP status. The Court will allow plaintiff another opportunity to show that she qualifies for
6 IFP status. Plaintiff must resubmit the long form application. Plaintiff must answer all questions on the
7 long form with detailed explanations about her s income, expenses, and assets. Plaintiff cannot leave any
8 questions blank or respond that a question is "N/A" without an explanation. Plaintiff revealed that she
9 spent \$12,000 on an attorney in this lawsuit, but her complaint does not reveal whether an attorney
10 helped her draft it. Plaintiff is also directed to inform the Court, in response to question No. 11 which
11 asks for further information, if an attorney helped her draft her proposed complaint or not.

12 IT IS SO ORDERED THAT:

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- 14 1. Plaintiff's *Application To Proceed In Forma Pauperis* (ECF No. 1) is DENIED without
15 prejudice.
 - 16 2. By **December 4, 2024**, plaintiff shall either (1) file the long form application to proceed in forma
17 pauperis as specified in the Court's order or (2) plaintiff must pay the full fee for filing a civil
18 action.
 - 19 3. Failure to timely comply with this Order may result in a recommendation that this case be
20 dismissed with prejudice.

21 **NOTICE**

22 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
23 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
24 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
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1 may determine that an appeal has been waived due to the failure to file objections within the specified
2 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
3 objections within the specified time and (2) failure to properly address and brief the objectionable issues
4 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
5 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
6 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, plaintiffs must immediately file written
7 notification with the court of any change of address. The notification must include proof of service upon
8 each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel.

9 **Failure to comply with this rule may result in dismissal of the action.**

10 It is so ordered.

11 DATED November 4, 2024.

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14 Hon. Maximiliano D. Couvillier III
15 United States Magistrate Judge
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